

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

MIGUEL DURAN,

Plaintiff,

v.

OFFICER WILLIAM WARNER, et
al.,

Defendants.

HON. JEROME B. SIMANDLE

Civil No. 07-5994 (JBS/AMD)

MEMORANDUM OPINION

SIMANDLE, District Judge:

This matter is before the Court on three of Plaintiff's motions: for an extension of time to file opposition to Defendants' summary judgment motion; for reconsideration pursuant to L. Civ. R. 7.1(i); and for an extension of time to move to amend the Complaint pursuant to Rule 15, Fed. R. Civ. P. [Docket Item 115]. No opposition to these motions has been filed. The Court finds as follows:

1. After the filing of Defendants' summary judgment motion [Docket Item 99], Plaintiff's counsel withdrew from the case [Docket Item 108]. The Court has given Plaintiff, who is now proceeding pro se, the opportunity to file his own opposition to the summary judgment motion. Plaintiff has requested an extension of time because he has outstanding discovery motions, because receiving the existing discovery from his former attorney has taken longer than expected, and because his status as a prisoner causes delays.

2. Plaintiff has presented facts to justify a finding that he cannot adequately oppose the summary judgment motion at this juncture. In the wake of the withdrawal of Plaintiff's attorney, Plaintiff is entitled to an opportunity to review the existing evidence, have his discovery requests heard, and have his motion to amend the complaint heard. Additionally, efficient resolution of this matter calls for dismissal of the summary judgment motion without prejudice until a decision with respect to the motion to amend the complaint is made.

3. Therefore, the Court will dismiss the summary judgment motion pursuant to Rule 56(f), Fed. R. Civ. P., without prejudice to refiling it after Plaintiff's motion to amend and motions for discovery are decided. This will give Plaintiff adequate time to review the existing evidence, and resolve the issues that logically precede summary judgment. Although Plaintiff has not submitted a formal affidavit in compliance with Rule 56(f), his handwritten submission is signed and sworn, and consistent with his former attorney's representations to the Court. Under the circumstances, including the fact that the motion is being decided on the basis of the known facts regarding the withdrawal of Plaintiff's counsel and in the absence of opposition, the Court will grant Plaintiff's motion for more time.

4. Plaintiff's motion for reconsideration asks this Court to take some action with respect to his former counsel's

voluntary dismissal of certain Defendants [Docket Item 85]. As this voluntary dismissal was not by order of the Court, it is not the proper subject of reconsideration. If Plaintiff seeks to rejoin these Defendants to the case, he may propose to do so in his motion to amend the complaint, wherein he must demonstrate good cause to join parties who were previously dismissed. The motion for reconsideration will be otherwise denied.

5. Plaintiff's motion for an extension of time to file a motion to amend the Complaint will be granted. Plaintiff will have until January 3, 2011, to file such a motion which must include his proposed amended complaint. Failure to include the proposed amended complaint will result in denial of the motion with prejudice.

6. If Plaintiff does not move to amend the Complaint before January 4, 2011, then Defendants may re-submit their summary judgment motion as soon as Plaintiff's discovery motions are decided.

7. The accompanying Order will be entered.

November 29, 2010
Date

s/ Jerome B. Simandle
JEROME B. SIMANDLE
United States District Judge